

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 70-3085
BWX Technologies, Inc.	)	License No. SNM-2001
Lynchburg, Virginia	)	EA-11-153
	)	

CONFIRMATORY ORDER MODIFYING LICENSE  
(EFFECTIVE IMMEDIATELY)

I

BWX Technologies, Inc. (BWXT or the Licensee) is the holder of U.S. Nuclear Regulatory Commission (NRC or Commission) License No. SNM-2001 (License) issued by the NRC pursuant to 10 CFR Part 70. The License authorizes BWXT to receive, acquire, possess, and transfer byproduct, source, and special nuclear material (SNM), pursuant to the terms and conditions of the aforementioned License, at the Shallow Land Disposal Area (SLDA) located in Parks Township, Pennsylvania. The License was issued on October 24, 1995, was most recently amended on June 20, 2011, and remains in effect.

II

In accordance with the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States, January 2002 (Public Law 107-117, Section 8143), the remediation of radiologically contaminated soil and waste material at the SLDA site will be performed by the U.S. Army Corps of Engineers (USACE), as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP), and pursuant to the Energy and Water Development Appropriations Acts for Fiscal Years 1998-2001 (Public Laws 105-62, 105-245, 106-60, and 106-377, respectively). Section 611 of Public Law 106-60 requires USACE to remediate FUSRAP sites in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as

amended (CERCLA), 42 U.S.C. 9601 *et seq.*, and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300. USACE, as provided for in Section 121(e) of CERCLA and 40 CFR § 300.400(e), is not required to obtain an NRC license for its on-site remediation activities conducted under its CERCLA authority.

In accordance with Article III of the “Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and The U.S. Army Corps of Engineers for Coordination of Cleanup & Decommissioning of the Formerly Utilized Sites Remedial Action Program (FUSRAP) Sites With NRC-Licensed Facilities,” 66 FR 36606 (July 12, 2001), at the request of USACE, NRC will initiate action for the suspension of BWXT’s License, contingent upon USACE notifying NRC in writing, at least 90 days prior to USACE’s expected date of initiation of a site response action, that USACE is prepared to take possession of all the licensed site for purposes of control of radiation from FUSRAP materials subject to NRC jurisdiction. Upon taking possession, USACE will be responsible for the protection of the public health and safety from those materials consistent with 10 CFR Part 20, “Standards for Protection Against Radiation.”

Article III of the Memorandum of Understanding (MOU) further provides that USACE agrees to provide notification to NRC that it is prepared to take possession of the SLDA site after USACE issues its final Record of Decision (ROD), and that USACE agrees to remediate the licensed site to meet at least the requirements of CERCLA and 10 CFR § 20.1402. USACE issued its ROD for the remediation of radiological soil and waste material at the FUSRAP SLDA Site in September 2007. The NRC reviewed the ROD and concludes that the planned remediation and disposal of the buried materials in an NRC-licensed disposal facility, as proposed in the ROD, are consistent with the applicable provisions of the MOU between NRC and USACE.

Article III of the MOU further provides that NRC licensing action for suspension of the License will be effective subject to written notification by USACE to NRC that USACE has taken physical possession of the licensed site for purposes of radiation control, and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR Part 20. Article III further states that USACE has no objection to, and will facilitate, NRC observing USACE in-process remediation activities. Finally, Article III of the MOU provides that following completion of its response action at the site, USACE shall provide NRC with a copy of the CERCLA Administrative Record.

Article III of the MOU provides that NRC will reinstate the License if USACE no longer controls the FUSRAP-related portion of the site for radiation protection purposes, is no longer proceeding with a response action under CERCLA, or has otherwise completed its response action. Article III of the MOU also provides that USACE will notify NRC in writing, at least 90 calendar days prior to USACE terminating its physical possession for purposes of control of radiation so that NRC can initiate the process for reinstating the License.

### III

By letter dated March 16, 2011, as supplemented by letter dated June 7, 2011, the Licensee notified the NRC and agreed that:

- A. The License shall be suspended in its entirety after USACE takes physical possession of the SLDA site.
- B. Cabrera Services, Inc. (Cabrera), or another similarly qualified subcontractor possessing a license under which the work can be performed, will be contracted to manage excavated materials that are below the soil cleanup Derived Concentration Guideline Levels (DCGL) and cannot be reused at the site; Cabrera (or a similarly qualified subcontractor) will also manage the transportation and disposal of this material.

- C. All activities executed by Cabrera (or a similarly qualified subcontractor) will be performed in accordance with an NRC license (Cabrera License No. 06-030556-01 or comparable) and with all State and local requirements for handling and shipping excavated material, as applicable.
- D. The site access agreements between BWXT and the USACE, along with the contract between BWXT and Cabrera (or a similarly qualified subcontractor) will ensure that BWXT and Cabrera (or a similarly qualified subcontractor) have appropriate access to the site to execute the work activities.
- E. Prior to engagement of another subcontractor to perform work at the site, BWXT will provide the NRC with at least 90 days notice and opportunity for review of the proposed subcontractor.
- F. Notwithstanding the License suspension, BWXT may make a request for alternate disposal pursuant to 10 CFR § 20.2002 for approval of proposed procedures, not otherwise authorized in the NRC regulations, to dispose of soil below DCGL generated by on-site remediation activities.

In addition, the Licensee consented to issuance of this Order with the commitments, as described above. The Licensee further agreed that this Order shall be effective upon issuance, and that it waives its right to a hearing with respect to this Order.

Implementation of these commitments will provide enhanced assurance that sufficient resources will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that the Licensee's commitments, as set forth above, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and

safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Licensee's consent, this Order is immediately effective upon issuance.

## IV

Accordingly, pursuant to Sections 81, 83, 84, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 20, 70, 73 and 74 IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. SNM-2001 IS MODIFIED AS FOLLOWS:

- A. The License shall be suspended in its entirety after USACE takes physical possession of the site. License suspension shall be effective upon the date of the written notification to NRC by USACE that it has taken physical possession of the site for purposes of radiation control, and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR Part 20.
- B. Furthermore because certain amounts of special nuclear material may be encountered during remediation activities, USACE will be responsible for the criticality safety, physical protection, and material control and accounting of the special nuclear material as set forth in 10 CFR Part 70 "Domestic Licensing of Special Nuclear Material," Part 73 "Physical Protection of Plants and Materials" and, Part 74 "Material Control and Accounting of Special Nuclear Material." The handling of special nuclear material during USACE's remediation is detailed in the Final Work Plans dated April and May, 2011 that were reviewed and accepted by the NRC as satisfying the regulatory requirements in 10 CFR Parts 70, 73, and 74, as applicable.
- C. The License shall be reinstated:
  - (1) After USACE notifies NRC in writing that USACE intends to terminate its physical possession of the site for the purpose of radiation control and the handling of special nuclear material; and

- (2) After USACE is no longer controlling the site for radiation protection purposes and the handling of special nuclear material, is no longer proceeding with a response action at the site under CERCLA, or has otherwise completed its response action for the site; and
  - (3) After the Licensee reestablishes physical possession of the site.
- D. The Licensee shall establish physical possession of the site immediately after USACE vacates the site. Within 2 business days after the Licensee establishes physical possession of the site, the Licensee shall send written notification to NRC that it has done so and indicate when it did so. The Licensee shall send such notices to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the Chief, Special Projects Branch, Division of Waste Management and Environmental Protection at the same address.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its publication in the *Federal Register*. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the

submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based

submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at (866) 672-7640. The NRC Meta System Help

Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/EHD/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than the Licensee) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the *Federal Register* without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

**/RA/**

Cynthia A. Carpenter, Acting Director  
Office of Federal and State Materials  
and Environmental Management Programs

Dated this 5th day of August, 2011